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NEW MOTOR VEHICLE BOARD

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FAIRFIELD IMPORTS THREE, LLC,
a California Limited Liability Company

FILED
NEW MOTOR VEHICLE BOARD
DATE 12-7-18
BY MT

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

FAIRFIELD IMPORTS THREE, LLC, a
California Limited Liability Company,

Protestant,

vs.

HYUNDAI MOTOR AMERICA, a California
Corporation,

Respondent

Protest No.: PR-2582-18

PROTEST

[Vehicle Code §3060]

**(PREHEARING CONFERENCE
AND HEARING REQUESTED)**

PROTEST PURSUANT TO VEHICLE CODE SECTION 3060

Protestant FAIRFIELD IMPORTS THREE, LLC, dba Momentum Hyundai, a California
Limited Liability Company ("Momentum Hyundai," "Dealer," or "Protestant"), through its
attorneys, hereby files this Protest pursuant to Vehicle Code section 3060 and alleges as follows:

1. Momentum Hyundai is a duly licensed California new motor vehicle dealer doing
business at 2775 Auto Mall Parkway, Fairfield, CA, 94533, and its telephone number is (707) 402-
5700

2. Momentum Hyundai is represented in this matter by Halbert B. Rasmussen of Scali
Rasmussen whose address is 800 Wilshire Boulevard, Suite 400, Los Angeles, CA, 90017 and

1 telephone number is (213) 239-5622.

2 3. Respondent HYUNDAI MOTOR AMERICA., a California Corporation ("HMA")
3 is a licensed vehicle manufacturer / distributor whose principal office is located in the State of
4 California. HMA's mailing address is 10550 Talbert Avenue, Fountain Valley, CA, 92708, and its
5 telephone number is (714) 965-3000. The notice to which this protest relates was signed by Bob
6 Kenney, General Manager, Western Region, at the address set forth above.

7 4. Momentum Hyundai is a "franchisee" as defined under Vehicle Code section 331.1
8 and HMA is a "franchisor" as defined under Vehicle Code section 331.2.

9 5. Momentum Hyundai sells new motor vehicles and associated parts, accessories,
10 and service pursuant to a written agreement and "franchise," as defined in Vehicle Code section
11 331, entered into by and between Momentum Hyundai and HMA, all of which being subject to the
12 jurisdiction of the New Motor Vehicle Board (hereinafter the "Board").

13 6. On or about November 29, 2018, Momentum Hyundai received a letter from HMA
14 dated November 28, 2018, (the "Notice") purporting to give Momentum Hyundai 15-day notice
15 of termination of Momentum Hyundai's franchise as a HMA dealer. The Notice failed to comply
16 with the requirements of law and the franchise for giving notices of termination.

17 7. At no time has Momentum Hyundai agreed to, or acquiesced in, or otherwise
18 indicated any approval whatsoever for the purported termination of the franchise.

19 8. Momentum Hyundai denies that the reasons for termination set forth in the Notice
20 are true and generally denies each and every allegation contained in the Notice. Momentum
21 Hyundai avers that the reasons for termination set forth in the Notice are misleading.

22 9. Momentum Hyundai denies that any of the reasons for termination set forth in the
23 Notice (whether true or not) constitute valid contractual grounds for termination under the
24 franchise agreement.

25 10. Momentum Hyundai furthermore denies that good cause exists under the existing
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27
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1 circumstances for terminating Momentum Hyundai's franchise. By way of example, and among
2 other legal and factual contentions, the following reflect the lack of such good cause:

3 (a) Momentum Hyundai has transacted and is transacting an adequate amount
4 of business compared to the business available to it;

5 (b) Momentum Hyundai has made a substantial and permanent investment in
6 the dealership, which will be damaged if HMA's purported termination of
7 Momentum Hyundai's franchise is allowed;

8 (c) It would be injurious to the public welfare for Momentum Hyundai's
9 franchise to be terminated by HMA;

10 (d) Momentum Hyundai has adequate motor vehicle sales and service facilities,
11 equipment, vehicle parts, and qualified service personnel to reasonably provide for
12 the needs of buyers and owners of HMA's same-make products in the market area
13 and is rendering adequate service to the public;

14 (e) The extent of Momentum Hyundai's noncompliance, if any, with the terms
15 of the franchise agreement is legally privileged by virtue of provisions of the
16 Vehicle Code and other applicable law and/or excused and, in any event, lacks
17 sufficient materiality to warrant termination.

18 (f) Momentum Hyundai is informed and believes and thereon alleges that the
19 purported termination runs contrary to numerous and substantial legal, equitable,
20 and contractual obligations of HMA and rights of Momentum Hyundai including
21 but not limited to those set forth in Vehicle Code, sections 3060, 11713.2, 11713.3,
22 and 11713.13, including, but not limited to the following: HMA's breach of the
23 exclusivity provisions of the franchise and applicable law by directly and unfairly
24 competing with Momentum Hyundai; HMA's failure and refusal to recognize and
25 treat Momentum Hyundai as a dealer generally and as a dealer able to represent

1 certain models within the line-make and its notification to Momentum Hyundai's
2 customers for HMA that Momentum Hyundai is no longer a dealer; and by HMA
3 conducting its vehicle sales and other competitive activities in California in
4 contravention of applicable law, including required dealer licensure under the
5 Vehicle Code.

6 11. Any contention of HMA that Momentum Hyundai failed to cure purported breaches
7 on its part or had agreed to termination under certain circumstances is incomplete, inaccurate,
8 insufficient to constitute good cause to terminate, contrary to applicable law, and subject to
9 Momentum Hyundai's averments set forth above.
10

11 12. Momentum Hyundai and its attorneys desire to appear before the Board and to have
12 a hearing on this Protest, it being estimated that the time required for hearing will be approximately
13 ten days.

14 13. Momentum Hyundai requests a prehearing conference.

15 **PRAYER**

16
17 WHEREFORE, Momentum Hyundai prays for relief as follows:

18 1. That the Board order HMA to refrain from terminating the franchise of Momentum
19 Hyundai, and from taking any acts that treat Momentum Hyundai as terminated or otherwise not
20 a HMA dealer, including an order prohibiting HMA from competing with Momentum Hyundai as
21 a dealer and from making public statements in derogation of Momentum Hyundai's status as a
22 HMA dealer, unless and until the Board overrules this Protest.

23
24 2. That the Board hold a hearing and based on the evidence and proof produced therein
25 determine that good cause does not exist for the termination of Momentum Hyundai's franchise
26 and thereby sustain this Protest; or if the Board does not enter such an order, that the Board
27 conditionally sustain this Protest on such terms as comport with the Board's authority under
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1 Vehicle Code section 3067; or, if the Board does not enter the orders aforesaid, that any order
2 overruling this Protest be conditioned in such a manner as shall preserve Momentum Hyundai's
3 rights under applicable law, including but not limited to Vehicle Code sections 11713.2, 11713.3
4 and 11713.13.

5 3. For such other rulings and relief as the Board deems just and equitable.
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7

8 DATED: December 7, 2018

SCALI RASMUSSEN

9
10 By: 

11 CHRISTIAN SCALI, ESQ.

12 HALBERT RASMUSSEN, ESQ.

13 Attorneys for Protestant,

14 FAIRFIELD IMPORTS THREE, LLC
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1 **PROOF OF SERVICE**

2 I am a citizen of the United States. My business address is The Scali Law Firm, 800
3 Wilshire Boulevard, Suite 400, Los Angeles, California 90017. I am employed in the County of
4 Los Angeles where this service occurs. I am over the age of 18 years, and not a party to the
5 within action.

6 On the date below, according to ordinary business practice, I served the foregoing
7 documents described as:

8 **PROTEST**

9 on the interested parties to this action in the manner described below and addressed as follows:

10 *****PLEASE SEE ATTACHED SERVICE LIST*****

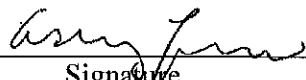
11 ☒ (BY E-MAIL) On this date, I personally transmitted the foregoing document(s) via
12 electronic mail to the e-mail address(es) of the person(s) on the attached service list
13 before 5:00 p.m., Pacific Standard Time.

14 ☒ (BY MAIL) I am readily familiar with my employer's business practice for collection
15 and processing of correspondence for mailing with the U.S. Postal Service, and that
16 practice is that correspondence is deposited with the U.S. Postal Service the same day
17 as the day of collection in the ordinary course of business. On this date, I placed the
18 document(s) in envelopes for collection and mailing following ordinary business
19 practices.

20 I declare under penalty of perjury under the laws of the State of California that the
21 foregoing is true and correct.

22 Executed on **December 7, 2018**, at Los Angeles, California.

23
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29 Ashley Langill
30 Declarant

31 
32 Signature

SERVICE LIST

**In the Matter of the Protest of FAIRFIELD IMPORTS THREE, LLC v. HYUNDAI
MOTOR AMERICA.**

Protest No.:

| | |
|---|---------------------------------|
| New Motor Vehicle Board 1507 – 21st Street, Suite 330 Sacramento, CA 905814 Email: nmvb@nmvb.ca.gov | Via Electronic Mail Only |
| HYUNDAI MOTOR AMERICA. c/o National Registered Agents, Inc. 818 West Seventh Street, Suite 930 Los Angeles, CA 90017 | Via Postal Mail Only |
| HYUNDAI MOTOR AMERICA. Attn: Bob Kenney 10550 Talbert Avenue Fountain Valley, CA 92708 | Via Postal Mail Only |